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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

*Via Hand Delivery*

Magalie R. Salas, Secretary  
Federal Communications Commission  
1919 M Street, NW, Room 222  
Washington, DC 20554

**Re: Ex Parte Presentation  
WT Docket No. 96-18 and PP Docket No. 93-253**

Dear Ms. Salas:

On October 26, 1998, and on behalf of Paging Network, Inc. ("PageNet"), Judith St. Ledger-Roty, with Kelley Drye & Warren, LLP, and the undersigned met with Daniel Phythyon, Rosalind Allen, Diane Conley, Louis Sigalos, and Anne Napoli of the Wireless Telecommunications Bureau to discuss the paging auction design and licensing issues. Enclosed is a copy of the written presentation for the meeting, which identifies the specific issues discussed. Additionally, it should be noted that these issues are also reflected in PageNet's filings in the above-referenced dockets.

In accordance with Section 1.1206 of the Commission's Rules, we are filing an original and two copies of this notice of *ex parte* presentation. Two additional copies have been provided for filing in each of the above-referenced dockets. If there are any questions concerning this notice, please do not hesitate to contact the undersigned directly.

Respectfully submitted,



Paul G. Madison

Enclosure

cc: Daniel Phythyon  
Rosalind Allen  
Diane Conley  
Louis Sigalos  
Anne Napoli

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## PAGENET "FUTURE OF PAGING" PROPOSAL

### I. Introduction

Paging Network, Inc. ("PageNet") proposed market area licensing for paging/messaging frequencies in 1992. It did so not because of its status as an incumbent, but because paging subscribers had already demonstrated their need for true wide-area systems, and its conclusion that the licensing of systems should reflect that need. Users needed then, and need even more now, to communicate throughout these wide areas. True market area licensing is the efficient way to achieve that result. To do otherwise would create pockets where no service can ever be provided within the market area.

PageNet continues to believe that the public interest is best served – in this case, only served – by creating licenses that are true MTA licenses. As set forth below, in order to achieve this result, PageNet believes the FCC's licensing proposals need to be modified to:

- ❖ *Achieve a licensing structure that awards MTA licenses to licensees that already serve 70% of the population of the MTA (70% coverage would be a threshold requirement).*
- ❖ *Accept applications for all remaining frequencies, after these MTA licenses have been granted.*

PageNet also believes the public interest would be served by amendment of the auction's processing rules. Among the more critical amendments PageNet proposes is:

- ❖ *The elimination of applicant's ability to check the "all" box on FCC Form 175, to avoid the phantom exclusivity that otherwise results.*

### II. The Applicable Law And Public Interest Rationale For The 70% Threshold Requirement

#### A. Applicable Law

PageNet's proposal is in accord with Section 309(j)(1) and 309(j)(6)(E), as amended. In the first instance, it is important to note the clear limits of the FCC's auction authority imposed through Public Law 105-216 in 1998. Under Section 309(j)(1), the FCC can only use auctions if it has met its obligations contained in Section 309(j)(6)(E). Section 309(j)(6)(E) obligates the FCC to continue to use engineering solutions, negotiations, threshold qualifications, service regulations and other means in order to avoid mutual exclusivity in application and license proceedings. The FCC's current proposal does not meet the new statutory obligations imposed because it makes no attempt to use engineering solutions, negotiations, threshold qualifications, service regulations and the like in order to avoid mutual exclusivity. It is clearly possible to avoid MXs through threshold qualifications, such as the 70% coverage for eligibility.

## **B. General Public Interest - Subscribers To Paging Service Will Only Obtain True Wide Area Service Through Proposals Like PageNet's**

Under the 70% threshold proposal, service to the white space will be available to be provided by the licensee who already serves 70% of the MTA.<sup>1</sup> This assures potential communications within the entire MTA. It eliminates fragmented MTA coverage by multiple licensees. For example, in the absence of proceeding in the manner PageNet suggests, customers of any system built in the predominantly rural white space could only get service within the white space; conversely, customers of carriers who have already built out the more populated areas would not be able to receive service when they travel beyond their coverage areas. (Customers will not reap the benefits of competition if carriers operate adjacent systems on the same frequency within the MTA -- it is only when carriers operate on different frequencies in the same or overlapping territory can competition exist.) This proposal also avoids poor service, and significant areas of no service within the interior of the MTA, to those subscribers that live and/or work in the area between any new co-channel MTA licensees and the incumbents. It will also reduce the potential for co-channel interference within each MTA.

## **III. The Applicable Law and Public Interest Rationale for PageNet's Proposal to Eliminate the "All" Box**

The Commission needs to require applicants to specify each particular license on which they intend to bid in order to eliminate phantom exclusivity. Anything short of that would be a clear violation of Sections 309(j)(1) and (6)(E).

FCC's revision of the proposed rules in order to comply with Section 309(j)(6)(E) will not have any deleterious consequences. Those companies needing to expand could do so on a secondary basis, just as was permitted in the 900 MHz SMR context.

## **IV. Other Key Auction Design Requirements**

The Commission should also revise its rules to assure that:

- ❖ Upfront Payments On Each License Are Identified In The Short Form Application. Upfront payments should be based on the total aggregate upfront payments specified for each license identified on the short form application. This will allow the Commission to comply with Section 309(j)(6)(E) because bidders must identify and pay for the privilege of bidding on specific licenses avoiding artificial mutual-exclusivity. (e.g., avoids two applicants checking the "all box" and paying one upfront payment MXing every license in the auction).

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<sup>1</sup> *Revision of Part 22 and Part 90 of the Commission's Rules to Facilitate Future Development of Paging Systems*, 12 FCC Rcd 2732, ¶16 (1997).

- ✦ *License-by-License Stopping Rule.* The auction of a particular MTA license should stop after the passing of two rounds in which no new high bid is placed on that license.
- ✦ *No Blind Auctions Are Permitted.* Bidder identities should be disclosed in the auction.
- ✦ *Necessary Statistical Information Is Provided.* Potential bidders should be provided with the statistical information regarding the portion of the population of each MTA currently served by an incumbent paging system.